

Endangered Species Act: No Effect Guidance for Idaho

(Prepared in collaboration with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Applies in Idaho only.)

24 CFR Part 58, 24 CFR Part 50

Purpose

The purpose of this checklist is to assist HUD and responsible entities in meeting their Endangered Species Act obligations. The checklist is designed to help you determine if the proposed project will have an effect to federally listed and proposed species or designated and proposed critical habitat. A determination of “**no effect**” to federally listed species and critical habitat fulfills HUD’s and the responsible entity’s obligation to ensure actions it authorizes, funds, or carries out do not jeopardize the continued existence of listed species or adversely modify designated critical habitat. “**No effect**” determinations do not require coordination with or concurrence from the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq., as amended; ESA).

ESA Section 7 Background

NMFS and FWS share responsibility for implementing the ESA. FWS trust resources under the ESA include birds, amphibians, plants, insects, terrestrial reptiles, terrestrial mammals, most freshwater fish, and a few marine mammals. NMFS manages the remainder of listed marine mammals, as well as anadromous fish such as salmon and steelhead.

Section 7(a) of the ESA directs all Federal agencies to conserve species listed as threatened or endangered. Those agencies, in consultation with NMFS and FWS, must ensure that their actions will not jeopardize the continued existence of any ESA-listed species. Based on analysis of the project activity and/or whether listed species or habitat is present, the Federal agency makes one of three determinations of effect for listed species:

- “**No effect**” is the appropriate conclusion if the proposed action will not affect listed species/critical habitat. If a “no effect” determination is made, the Federal agency is not obligated to contact FWS and/or NMFS for concurrence.
- When effects to listed species are expected to be beneficial, insignificant, or discountable¹, the action agency should make a “**not likely to adversely affect**” determination and contact FWS and/or NMFS, as appropriate, for written concurrence with that determination.
- If adverse effects are likely to occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, then the action agency should make a

¹ **Insignificant effects** relate to the size of the impact and should never reach the scale where take occurs, where take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. **Discountable effects** are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. **Beneficial effects** are contemporaneous with implementation of the action and are wholly beneficial without adverse effects at any time.

determination of **“likely to adversely affect.”** The Federal agency must initiate formal consultation with FWS and/or NMFS as appropriate.

Procedure for Section 7 Determination

Use the guidance below to help you determine whether the project qualifies for a “no effect” determination.

Part A: Project Activity

Is the project activity listed in Table A (see next page) and does it meet all of the required parameters?

- ☐ **YES, the activity is listed in Table A and meets all of the required parameters.** Therefore, the project will have No Effect on ESA-listed species and/or designated critical habitat. There is no need to consult with National Marine Fisheries Service (NMFS) or with Fish and Wildlife Service (FWS).

- ☐ Record your determination of No Effect and maintain this documentation in your Environmental Review Record.
- ☐ Attach a statement to your determination explaining how your project met the required parameters in Table A.

YOU ARE DONE WITH THIS CHECKLIST. YOU DO NOT NEED TO INITIATE SECTION 7 CONSULTATION.

- ☐ **NO, the project description does not match a project description in Table A and all of the specified parameters.**

CONTINUE TO PARTS B AND C.

TABLE A.

Potential “No Effect” Activity	Required Parameters
Landscape repair, including adding sprinkler systems ²	<ul style="list-style-type: none"> Does not remove trees or streamside vegetation If located within the map area outlined in Appendix A, does not require increasing the volume or rate of water withdrawn from surface or groundwater sources
Interior rehabilitation	<ul style="list-style-type: none"> For existing structures Waste materials are recycled or otherwise disposed of in an EPA approved sanitary or hazardous waste disposal site
Exterior rehabilitation, including: <ul style="list-style-type: none"> Replacing exterior paint or siding Replace/repair roof³ Reconstruct/repair existing curbs, sidewalks or other concrete structures Repair existing parking lots (pot holes, repainting lines, etc.) 	<ul style="list-style-type: none"> Does not increase amount of impervious surface Waste materials are recycled or otherwise disposed of in an EPA approved sanitary or hazardous waste disposal site
New construction (does not increase impervious surface)	Meets <u>all</u> of the following: <ul style="list-style-type: none"> On previously developed parcel; and Does not remove trees or streamside/riparian vegetation; and Complies with all state and local building codes and storm water regulations; and Infiltrates all storm water onsite <u>OR</u> does not discharge storm water to a salmonid-bearing stream or proposed/designated critical habitat; and Quarry sites and materials spoil sites have been assessed as part of any proposed action.
New construction (increases impervious surface)	Meets <u>all</u> of the following: <ul style="list-style-type: none"> On previously developed parcel; and Does not remove trees or streamside/riparian vegetation; and Complies with all state and local building codes and storm water regulations; and Discharges storm water to non- salmonid-bearing stream within the same sub-basin⁴ <u>OR</u> infiltrates all treated storm water within the same sub-basin; and Quarry sites and materials spoil sites have been assessed as part of any proposed action.

² When choosing plants, HUD suggests that you consult the Idaho Invasive Species List (<https://invasivespecies.idaho.gov/>) and the Idaho Noxious Weed List (<https://invasivespecies.idaho.gov/plants>) to avoid plants that are designated as invasive or noxious by state law.

³ Not including galvanized material unless it has been sealed or otherwise confined so that it will not leach into stormwater.

⁴ Discharge point must be a minimum of ¼ mile from salmonid bearing stream or proposed/designated critical habitat

Part B: Consultation with National Marine Fisheries Service

B1. Designated or proposed critical habitats covered by National Marine Fisheries Service (NMFS) fall within Adams, Benewah, Blaine, Clearwater, Custer, Idaho, Latah, Lemhi, Lewis, Nez Perce, Shoshone and Valley Counties. Is the project located within one of these counties?

- ☐ **NO, the project is not located within one of these counties.** Therefore, there is no need to consult with NMFS. Consultation with Fish and Wildlife Service may still be necessary.
- ☐ Record your determination of No Effect on species or habitats covered by NMFS, and maintain this documentation in your Environmental Review Record.
 - ☐ Attach a statement to your determination explaining that your project is not located within one of the counties covered by NMFS.
 - ☐ Consultation with FWS may still be necessary. CONTINUE TO PART C.
- ☐ **YES, the project is located within one of these counties.** Continue to question B2.

B2. Would the project effects overlap with federally listed or proposed species and designated or proposed critical habitat covered by NMFS? Note that project effects include those that extend beyond the project site itself, such as noise, water quality, stormwater discharge, visual disturbance; and habitat consideration must include consideration for feeding, spawning, rearing, overwintering sites, and migratory corridors.

For NMFS species and designated or proposed critical habitat go to:
<https://www.fisheries.noaa.gov/resource/map/species-and-habitat-app>. For assistance, contact the Idaho State Habitat Office at (208) 378-5696.

- ☐ **NO, the project and all effects are outside the range of listed or proposed species and designated or proposed critical habitat covered by NMFS?** Therefore, there is no need to consult with NMFS. However, consultation with FWS may still be necessary.
- ☐ Record your determination of No Effect on species or habitats covered by NMFS, and maintain this documentation in your Environmental Review Record.
 - ☐ Attach a statement explaining how you determined that your project's effects do not overlap with species or habitat covered by NMFS.
 - ☐ Consultation with FWS may still be necessary. CONTINUE TO PART C.
- ☐ **YES, project effects may overlap with ESA-listed or proposed species and designated or proposed critical habitat covered by NMFS?** Therefore, your project may affect species and habitat.
- ☐ YOU MUST INITIATE SECTION 7 CONSULTATION WITH NMFS.
 - ☐ Consultation with FWS may also be necessary. CONTINUE TO PART C.

Part C: Consultation with Fish and Wildlife Service

Would the project effects overlap with federally listed or proposed species or designated or proposed critical habitat covered by Fish and Wildlife Service? Note that project effects include those that extend beyond the project site itself, such as noise, air pollution, water quality, storm-water discharge, visual disturbance; and habitat consideration must include consideration for roosting, feeding, nesting, spawning, rearing, overwintering sites, and migratory corridors.

Go to <https://ecos.fws.gov/ipac/> for a list of species based on the action area delineated by the action agency. Please note that this list includes listed, proposed *and* candidate species as well as designated *and* proposed critical habitat; consideration of project effects on candidate species is optional. However, candidate species may become listed during the period of construction.

- ☐ **NO, the project and all effects are outside the range of listed species and critical habitat covered by FWS.** Therefore, the project will have No Effect on ESA-listed species or designated critical habitat. It is not necessary to contact FWS because FWS does not review or concur with no effect determinations.
- ☐ Record your determination of No Effect on species or habitats covered by FWS, and maintain this documentation in your Environmental Review Record.
- ☐ Attach a statement explaining how you determined that your project's effects do not overlap with species or habitat covered by FWS.
- ☐ **YES, project effects may overlap with ESA-listed or proposed species and proposed or designated critical habitat covered by FWS.** Therefore, your project may affect species and habitat.
- ☐ YOU MUST INITIATE SECTION 7 CONSULTATION WITH FWS.

Initiating Section 7 Consultation

If the effects of the action are insignificant, discountable, or entirely beneficial, it is *not likely to adversely affect* a federally listed and proposed species or designated and proposed critical habitat, and informal section 7 consultation for the project shall be requested. Concurrence from FWS and/or NMFS on a May Affect, Not Likely to Adversely Affect determination is the most common outcome of consultation for HUD-funded projects.

However, if the effects of the action on listed species and/or critical habitat are not discountable, insignificant, or beneficial, (i.e., likely to adversely affect), formal Section 7 consultation must be initiated. In such cases, a formal consultation must be initiated prior to making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives, which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

At any stage in making your determination, you may wish to contact the appropriate FWS and NMFS field offices for technical assistance. Contact information is available at:

National Marine Fisheries Service
Idaho State Habitat Office
10095 W Emerald
Boise, Idaho 83704
(208) 378-5696
www.nmfs.noaa.gov

Fish and Wildlife Service
Idaho Fish and Wildlife Office
1387 Vinnell Way, Room 368
Boise, ID 83709
(208) 918-2155
Send all Section 7 consultation requests to:
fwlidahoconsultationrequests@fws.gov

DISCLAIMER: This document is intended as a tool to help grantees and HUD staff complete NEPA requirements. This document is subject to change. This is not a policy statement, and the Endangered Species Act and associated regulations take precedence over any information found in this document.

Questions concerning environmental requirements relative to HUD programs can be addressed to Brian.Sturdivant@HUD.gov.